

SUPREME COURT OF INDIA

Brij Pal Bhargava

Vs.

State of U.P.

C.A.No.2020 of 2011

(V.S. Sirpurkar and Anil R.Dave, JJ.,)

23.02.2011

JUDGMENT

V.S.Sirpurkar,J.,

1. Leave granted.
2. Land owners - appellants have challenged the judgment of Allahabad High Court, challenging the dismissal of their petition, whereby they had challenged the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called "the Act" for short). The lands comprised in Plot Nos. 542, 543 and 544 of Village Jainsinghpura Bangar, Mathura, U.P., measuring 6.6 acres were sought to be acquired by notification dated 20.3.1991 issued under Section 4 of the Act. Ultimately, after the enquiry under Section 5A of the Act, the notification under Section 6 of the Act came to be issued on 28.2.1992. It is an admitted position that in pursuance thereof, the award has also been passed.
3. Shri U.U. Lalit, the learned senior counsel appearing on behalf of the appellants urged before us that the High Court has not considered the major defects in the whole proceedings under the Act and more particularly, under Section 5A of the Act. The learned senior counsel vehemently argued that in pursuance of the notice inviting objections under Section 5A of the Act issued by Collector, Mathura, published in the newspaper "Amar Ujala" dated 21.3.1991, the appellants filed their objections under Section 5A of the Act on 18.4.1991 ventilating their grievances. The appellants had also sought for an opportunity of personal hearing and accordingly, Shri Brij Pal Bhargava had appeared before the Land Acquisition Officer on 3.5.1991; however, on that date, he was informed by the Land Acquisition Officer that no reply was filed by the Land Acquisition Department to the objections filed by the appellants. It was also informed that the officers were busy in election duty and, therefore, no hearing was possible on that date and the next date of hearing would be communicated to the appellants in due course. The learned senior counsel pointed out that thereafter, no date was ever informed to the appellants and ultimately, no hearing was given and instead the Government came out with the publication of the notification dated 28.2.1992 under Section 6 of the Act. The learned senior counsel asserted that in the absence of any hearing under

Section 5A of the Act, the whole proceedings under the Act were rendered illegal. The learned senior counsel also relied on the affidavit of the lawyer of appellants in land acquisition proceedings asserting that no hearing opportunity was given to him.

4. This contention was very strongly refuted by Shri Dinesh Dwivedi and Shri Vikas Singh, learned senior counsel appearing on behalf of the State of U.P. and Mathura Vrindavan Development Authority (respondent No. 3) respectively. The original report was produced before us. Both the learned senior counsel urged that on that day i.e. 3.5.1991, a further date was given and the parties were heard and it is only thereafter that an investigation report was prepared under Section 5A (2) of the Act. We have been taken through the said report wherein the objection on the part of the said Brij Pal Bhargava was the non-publication of the public notices under Section 4 of the Act. That contention was specifically refuted by pointing out that there was proper publication of the notices under Section 4 of the Act. The other objection raised was that the whole acquisition was done with mala fide intentions. It was suggested in the objection that about 150 acres of land for housing development was already acquired about 20 years back and yet no development had been made. It was also urged that the acquisition of the land for the planned housing development is not covered under the public purpose. It is apparent from the report that all these objections were dealt with holding that there was no question of any mala fides in the acquisition. It has also been held that the acquisition for the public purpose of planned housing development is very much a public purpose. The said acquisition has been justified on account of increase in the population and fast industrial development which required the availability of the houses for the persons of middle income group and lower income group, and of Scheduled Castes, Scheduled Tribes and backward class. The other objection raised was that the land was not suited for the public purpose since there was 16 year old village Abadi of about one and a half acre and there were number of trees on two and half acre land. That question has also been dealt with in details holding that the Mathura Vrindavan Development Authority would develop Public Park, School and Play Ground on the acquired land. Even the objections raised by one Devendra Nath Bhargava have been considered in details by the Land Acquisition Officer. We are quite convinced that all this could not have been possible unless the appellants were heard and their objections were considered in details. Shri U.U. Lalit, learned senior counsel appearing for the appellants urged that this Court had invited the original report and the original report did not show the factum of hearing. We have seen the original report and the order sheet. Indeed, there are dates given after the first date, on which date some of the objectors were also present. There are some missing pages. However, it is specifically mentioned in the report that the objectors have been heard. In our opinion, once the original report suggests that the objectors were heard, there is no point in urging that the appellants were not heard.

5. Shri Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority (respondent No. 3) relied on the decision in *Jayabheri Properties Private Limited & Ors. Vs. State of Andhra Pradesh & Ors*¹. The observations made in para 42, where this Court had specifically held that the contention raised on behalf of the appellants about hearing not afforded to the objectors was refuted on the ground that the objections filed were duly considered by the Special Dy. Collector and rejected by his order

dated 21.7.2006. Since we have seen the original report in this case, we are of the opinion that not only was the hearing afforded, but all the objections have been specifically considered. The counter affidavit shows a document where the objectors have been invited for the hearing on a fixed date i.e. 17.9.1991. We are of the clear opinion that not only the objectors were heard, but their objections were also decided. This contention raised on behalf of the appellants is rejected.

6. As regards the affidavit of the lawyer appearing on behalf of the appellants in land acquisition proceedings, we have gone through the affidavit. It is, however, completely bereft of the dates and other details. We, therefore, do not find it fit to rely upon the same.

7. The second contention raised by Shri Lalit, learned senior counsel is that though the acquisition proceedings are over and the award is also passed, the possession has not been taken at all. The learned senior counsel pointed out, relying on the decision in *Balwant Narayan Bhagde Vs. M.D. Bhagwan & Ors. etc. etc.*². that as per the majority view expressed by Bhagwati & Gupta, JJ., it is the physical possession which should be taken in pursuance of the land acquisition and not only symbolical possession or paper possession. The learned senior counsel also relied on the report to suggest that inspite of the acquisition, still the Revenue entries were in favour of the appellants showing their possession and the cultivation by them in respect of the land. Shri Lalit tried to show some photographs suggesting therein that the wicket gate had the lock of the appellants and thus contended that the possession still continues with the appellants. In fact, it is a question of fact as to whether the possession has been taken or not. However, the respondents have produced the possession receipt, where it is suggested that the possession was taken by the officers after going on the spot. Shri Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority (respondent No. 3) pointed out that it would be impossible for the Collector or Revenue officers to enter each bigha of land for taking possession thereof and, therefore, the pragmatic approach has to be adopted by the Court while considering as to whether possession has been taken or not. The learned senior counsel also pointed out that the documents show that actual possession was taken. He also tried to point out the photograph suggesting that not only the possession has been taken, but number of other activities of construction were going on at the land including drawing the layout thereof and building the roads therefor. The learned senior counsel relied on the reported decision in *Sita Ram Bhandar Society, New Delhi Vs. Lieutenant Governor, Government of NCT, Delhi & Ors.*³, as also in *Dahyabhai Ranchhoddas Dhobi & Anr. Vs. State of Gujarat & Ors.*⁴. where the view has been taken about the pragmatic approach to be adopted by the Courts in deciding as to whether the possession was taken or not. Seeing the report and the orders passed, we are thoroughly convinced that not only the possession was taken, but there are activities going on at the behest of the Mathura Vrindavan Development Authority. This is apart from the fact that this is a pure question of fact which has been answered by the High Court in no uncertain terms. In this view of the matter, we are of the clear opinion that even on this count, the appellants must fail.

8. We are completely satisfied with the judgment of the High Court and the findings therein. We confirm the same. No other question was raised. In result, the appeal fails and is dismissed, but without any costs.

Judgment Referred.

¹(2010) 5 SCC 0590

²(1976) 1 SCC 0700

³(2009) 10 SCC 0501

⁴(2010) 7 SCC 0705